

No. 1700

**UNITED STATES OF AMERICA
and
CANADA**

Convention (with related letter of 20 February 1951) modifying and supplementing the Convention and accompanying Protocol of 4 March 1942 for the avoidance of double taxation and the prevention of fiscal evasion in the case of income taxes. Signed at Ottawa, on 12 June 1950

Protocol of exchange of the instruments of ratification of the above-mentioned Convention. Signed at Washington, on 21 November 1951

Official text: English.

Registered by the United States of America on 15 April 1952.

**ÉTATS-UNIS D'AMÉRIQUE
et
CANADA**

Convention (avec lettre y relative du 20 février 1951) modifiant et complétant la Convention et le Protocole du 4 mars 1942 tendant à éviter les doubles impositions et à prévenir la fraude fiscale en matière d'impôts sur le revenu. Signée à Ottawa, le 12 juin 1950

Protocole d'échange des instruments de ratification de la Convention susmentionnée. Signé à Washington, le 21 novembre 1951

Texte officiel anglais.

Enregistrés par les États-Unis d'Amérique le 15 avril 1952.

No. 1700. CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND CANADA MODIFYING AND SUPPLEMENTING THE CONVENTION AND ACCOMPANYING PROTOCOL OF 4 MARCH 1942² FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION IN THE CASE OF INCOME TAXES. SIGNED AT OTTAWA, ON 12 JUNE 1950

The Government of the United States of America and the Government of Canada, being desirous of modifying and supplementing in certain respects the Convention and accompanying Protocol for the avoidance of double taxation and the prevention of fiscal evasion in the case of income taxes, signed at Washington on March 4, 1942,² have decided to conclude a supplementary Convention for that purpose and have appointed as their respective Plenipotentiaries :

The Government of the United States of America :

Julian F. Harrington, Chargé d'Affaires, ad interim of the United States of America at Ottawa, and

The Government of Canada :

Douglas Charles Abbott, Minister of Finance in the Government of Canada.

who, having communicated to one another their respective full powers, found in good and due form, have agreed as follows :

Article I

The provisions of the Convention and Protocol between the United States of America and Canada, signed at Washington on March 4, 1942, are hereby modified and supplemented as follows :

(a) By adding at the end of paragraph 1 of Article III the following new sentence :

“In the determination of the net industrial and Commercial profits of the permanent establishment there shall be allowed as deductions all expenses, wherever incurred, reasonably allocable to the permanent establishment, including executive and general administrative expenses so allocable.”

¹ The Convention came into force on 21 November 1951 by the exchange of the instruments of ratification at Washington, in accordance with article II.

² United Nations, *Treaty Series*, Vol. 124, p. 271.

(b) By amending Article VI to read as follows :

“ 1. (a) Remuneration, wages or salary (other than pensions) paid to an individual by the United States of America, or by any agency, instrumentality or political subdivision thereof, in respect of services rendered in the discharge of governmental functions, shall be exempt from Canadian tax if the individual is either a citizen of the United States of America, or is not ordinarily resident in Canada or is ordinarily resident in Canada solely for the purpose of rendering those services.

“ (b) Remuneration, wages or salary (other than pensions) paid to an individual, other than a citizen of the United States of America, by Canada, or by any agency, instrumentality or political subdivision thereof, in respect of services rendered in the discharge of governmental functions, shall be exempt from United States tax.

“ 2. The provisions of paragraph 1 of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on for purposes of profit by either of the contracting States or by any agency, instrumentality or political subdivision thereof.

“ 3. (a) The United States of America agrees to exempt from its income tax income derived from sources outside the United States of America by a member of the Canadian forces or by a citizen of Canada serving or employed by the Government of Canada at defense establishments in the United States of America, or by the wife or minor children of such member or citizen.

“ (b) The same principle shall apply, *mutatis mutandis*, to income derived from sources outside Canada by a member of the United States forces or by a citizen of the United States of America serving or employed by the Government of the United States of America at defense establishments in Canada, or by the wife or minor children of such member or citizen.”

(c) There is inserted immediately after Article VI the following new Article :

“ Article VI A

“ Pensions (including Government pensions) and life annuities derived from within one of the contracting States by a resident of the other contracting State shall be exempt from taxation in the former State.”

(d) By amending Article VII to read as follows :

“ 1. A resident of Canada shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States of America if he

is present therein for a period or periods not exceeding a total of 183 days during the taxable year and either of the following conditions is met—

“(a) his compensation is received for such personal services performed as an officer or employee of a resident or corporation or other entity of Canada, or

“(b) his compensation received for such personal services does not exceed \$5,000.

“2. The provisions of paragraph 1 (a) of this Article shall have no application to the professional earnings of such individuals as actors, artists, musicians and professional athletes.

“3. The provisions of paragraphs 1 and 2 of this Article shall apply, *mutatis mutandis*, to a resident of the United States of America with respect to compensation for such personal services performed in Canada.”

(e) There is inserted immediately after Article VIII the following new Article :

“ *Article VIII A*

“A professor or teacher who is a resident of one of the contracting States and who temporarily visits the other contracting State for the purpose of teaching, for a period not exceeding two years, at a university, college, school or other educational institution in such other State, shall be exempted by such other State from tax on his remuneration for such teaching for such period.”

(f) Paragraph 1 of Article XI is amended by striking out “engaged in trade or business in the former State and having no office or place of business therein” and inserting in lieu thereof “having a permanent establishment in the former State.”

(g) Article XII is amended to read as follows :

“1. Dividends and interest paid by a corporation organized under the laws of Canada to a recipient, other than a citizen or resident of the United States of America or a corporation organized under the laws of the United States of America, shall be exempt from all income taxes imposed by the United States of America.

“2. Dividends and interest paid by a corporation organized under the laws of the United States of America whose business is not managed and controlled in Canada to a recipient, other than a resident of Canada or a corporation whose business is managed and controlled in Canada, shall be exempt from all taxes imposed by Canada.”

(h) Article XIII is amended to read as follows :

“ 1. Corporations organized under the laws of Canada, more than 50 percent of the outstanding voting stock of which is owned, directly or indirectly, throughout the last half of the taxable year by individual residents of Canada, other than citizens of the United States of America, shall be exempt from any taxes imposed by the United States of America with respect to accumulated or undistributed earnings, profits, income, or surplus of such corporations.”

“ 2. Corporations organized under the laws of the United States of America, more than 50 percent of the outstanding voting stocks of which is owned, directly or indirectly, throughout the last half of the taxable year by individual residents of the United States of America shall be exempt from any taxes imposed by Canada in the nature of undistributed profits tax on undistributed profits of the corporation with respect to accumulated or undistributed earnings, profits, income, or surplus of such corporations.”

(i) There is inserted immediately after Article XIII the following new Article :

“ Article XIII A

“ 1. A resident or corporation organized under the laws of Canada deriving from sources within the United States of America rentals from real property may elect for any taxable year to be subject to the tax imposed by the United States of America on a net basis as if such resident or corporation were engaged in trade or business within the United States of America through a permanent establishment therein during such taxable year.

“ 2. Rentals from real property derived from sources within Canada by an individual or corporation resident in the United States of America shall receive tax treatment by Canada not less favorable than that accorded under Section 99, The Income Tax Act, as in effect on the date on which this Article goes into effect.”

(j) There is inserted immediately after Article XIII A, as inserted by subparagraph (i) of this Article, the following new Article :

“ Article XIII B

“ Directors' fees paid by a corporation to an individual residing in one of the contracting States for services at Directors' meetings held in that State shall be exempt from tax by the other State.”

(k) There is inserted immediately after Article XIII B, as inserted by subparagraph (j) of this Article, the following new Article :

“ Article XIII C

“ Royalties for the right to use copyrights or in respect of the right to produce or reproduce any literary, dramatic, musical, or artistic work (but not inclusive of rents or royalties in respect of motion picture films) derived from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not engaged in trade or business in the former State through a permanent establishment shall be exempt from tax imposed by such former State.”

(1) Article XV is amended as follows :

(A) By striking out of the first paragraph thereof, effective January 1, 1949, the following :

“ In accordance with the provisions of Section 8 of the Income War Tax Act as in effect on the day of the entry into force of this Convention,”

and inserting in lieu thereof the following :

“ 1. As far as may be in accordance with the provisions of The Income Tax Act,”.

(B) By striking out of the second paragraph thereof the following :

“ In accordance with the provisions of Section 131 of the United States Internal Revenue Code¹ as in effect on the day of the entry into force of this Convention,”

and inserting in lieu thereof the following :

“ 2. As far as may be in accordance with the provisions of the United States Internal Revenue Code,”.

(m) Article XVII is amended by inserting immediately after the words “ items of income ” the following : “ (other than income within the scope of paragraph 1 (b) of Article VI) ”.

(n) There is inserted immediately after Article XVIII the following new Article :

¹ United States of America : 26 U.S.C. § 131.

Article XVIII A

“ To avoid withholding of both United States tax and Canadian tax with respect to compensation for personal services performed by a resident of one of the contracting States while temporarily present in the other State—

“(a) The Commissioner may, with the approval of the Secretary of the Treasury, by regulations specify the circumstances under which such compensation of a resident of the United States of America temporarily performing personal services in Canada may be exempted from deduction and withholding of United States tax, and

“(b) The appropriate Canadian authority may by regulations specify the circumstances under which such compensation of a resident of Canada temporarily performing personal services in the United States may be exempted from deduction and withholding of Canadian tax.”

(o) Paragraph 3 (f) of the Protocol is amended by inserting at the end of the first sentence thereof the following sentence :

“ The use of substantial equipment or machinery within one of the contracting States at any time in any taxable year by an enterprise of the other contracting State shall constitute a permanent establishment of such enterprise in the former State for such taxable year.”

(p) By striking out paragraph 6 of the Protocol and inserting in lieu thereof the following :

“ 6. The term ‘ subsidiary corporation ’ as used in Article XI of this Convention means a corporation 95 percent of whose shares (other than Directors’ qualifying shares) having full voting rights are beneficially owned by another corporation, provided that (except in the case of a corporation the chief business of which is the making of loans) ordinarily not more than one-quarter of the gross income of such subsidiary corporation is derived from interest and dividends other than interest and dividends received from its subsidiary corporations.”

(q) By changing “ Article VI ” in paragraphs 8 and 9 of the Protocol to read “ Article VI A ”.

(r) Paragraph 10 of the Protocol is amended to read as follows :

“ 10. The term ‘ permanent establishment ’ as used in Article XI of this Convention, shall not be deemed to include an office used solely for the purchase of merchandise.”

Article II

1. The present supplementary Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. The present supplementary Convention shall, except as provided in Article I (1) (A), become effective with respect only to taxable years beginning on or after the first day of January of the calendar year in which occurs the exchange of the instruments of ratification. It shall continue effective indefinitely as though it were an integral part of the Convention of March 4, 1942, subject to the provisions of Article XXII of that Convention with respect to termination.

IN WITNESS WHEREOF the above-named Plenipotentiaries have signed the present Convention and have affixed thereto their respective seals.

DONE, in duplicate, at Ottawa this 12th day of June 1950.

For the Government of the United States of America :
Julian F. HARRINGTON

For the Government of Canada :
D. C. ABBOTT

RELATED LETTER

The Canadian Under-Secretary of State for External Affairs to the American Ambassador

OFFICE OF THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
CANADA

Ottawa, February 20, 1951

Dear Mr. Ambassador :

The question has arisen as to the meaning of the words " managed and controlled " as used in Paragraph 2 of Article XII of the Convention of March 4, 1942, between Canada and the United States of America, as amended by Article I (g) of the Supplementary Convention of June 12, 1950.

I have consulted with our taxation authorities. It is our view, having regard to presently existing judicial decisions, that, so long as the stock control of the corporation is not in Canada, its directors' meetings and shareholders' meetings are not held in Canada and its " management-control " is not in Canada, the corporation is not managed and controlled in Canada. For this purpose the " management-control " of the corporation is not in Canada if the policies governing the operations and supervision of the corporation are not settled in Canada even though its entire operations are carried on, and such supervision is exercised, in Canada.

It is also our view that the term " resident " as used in Article XII as amended does not include a corporation.

Yours sincerely,

A. D. P. HEENEY
Under-Secretary of State for External Affairs

The Honourable Stanley Woodward
Ambassador of the United States of America
100 Wellington Street
Ottawa

PROTOCOL OF EXCHANGE OF THE INSTRUMENTS OF RATIFICATION OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND CANADA, SIGNED AT OTTAWA, ON 12 JUNE 1950,¹ MODIFYING AND SUPPLEMENTING THE CONVENTION AND ACCOMPANYING PROTOCOL OF 4 MARCH 1942² FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION IN THE CASE OF INCOME TAXES. SIGNED AT WASHINGTON, ON 21 NOVEMBER 1951

The undersigned, James E. Webb, Acting Secretary of State of the United States of America, and W. D. Matthews, Minister of Canada to the United States of America, being duly authorized thereto by their respective Governments, have met for the purpose of exchanging the instruments of ratification by their respective Governments of the convention between the United States of America and Canada, signed at Ottawa on June 12, 1950, modifying and supplementing in certain respects the convention and accompanying protocol for the avoidance of double taxation and the prevention of fiscal evasion in the case of income tax signed at Washington on March 4, 1942, and, the respective instruments of ratification of the supplementary convention aforesaid having been compared and found to be in due form, the exchange took place this day.

As recited in the ratification on the part of the United States of America, the Senate of the United States of America, in its resolution of September 17, 1951, advising and consenting to the ratification of the supplementary convention aforesaid, expressed a certain reservation with respect thereto, as follows :

“ The Government of the United States of America does not accept paragraph 2 of Article VII, as amended by Article I (*d*) of the supplementing convention, relating to professional earnings of individuals such as actors, artists, musicians and athletes.”

The text of the said reservation was communicated by the Government of the United States of America to the Government of Canada. The Government of Canada has accepted the said reservation. Accordingly, it is understood by the two Governments that the supplementary convention aforesaid, upon entry into force in accordance with its provisions, is modified in accordance with the said reservation, so that, in effect, paragraph 2 of Article VII of the

¹ See p. 68 of this volume.

² United Nations, *Treaty Series*, Vol. 124, p. 271.

convention of March 4, 1942, as amended by Article I (*d*) of the aforesaid supplementary convention of June 12, 1950, is deemed to be deleted.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed the present Protocol of Exchange.

DONE in duplicate at Washington this twenty-first day of November, 1951.

For the Government of the United States of America :
James E. WEBB

For the Government of Canada :
W. D. MATTHEWS